

Attendance Sheet

Planning and Zoning Meeting

July 5, 2016

PLEASE PRINT

Name

Address

1 Scott Holder

Vichita, KS

2 Barry Stichter

2014 N 11th C. St

3 Linda Stichter

2014 N 11th

4 Dan Colon

2230 Sue Lane

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MINUTES
Independence Planning Commission/Board of Zoning Appeals
Tuesday, July 5, 2016
Veterans Room, Memorial Hall 5:30 p.m.

Call to Order

Planning Commissioners Present

Steve McBride, Mary Schmidt, Darnell Lawrie, John Faller and Tony Holmes

Planning Commissioners Absent

Mary Jo Dancer*, Nick McCollam*, Philip Umlauf and Jim Hardy.

*Outside Appointments are not on the Board of Zoning Appeals

Staff Present

Kelly Passauer, Assistant City Manager/Zoning Administrator

Visitors Present

Scott Holder

Dan Colon

Larry and Linda Stockton

a. Consider approving minutes of the June 7, 2016 meeting.

Steve McBride made a motion to approve the minutes from the June 7, 2016 meeting.

Darnell Lawrie seconded the motion to approve the minutes. Motion carried 5-0.

Board of Zoning Appeals

b. Consider a request for variance(s) to encroach on the setback(s) in an R-1 zoned district at 2230 Sue Lane.

Dan Colon explained that he wanted to construct a storage shed that would encroach on the rear setback.

Staff provided the following staff report to the board in written form prior to the meeting:

Overview of Variance Requested

The Board of Zoning Appeals has received an application from Daniel R. Colon to grant a variance from the setback regulations as provided for in the zoning ordinance.

Review of Request

His request is to encroach upon the rear yard setback to construct an 8' X 24' storage shed. The applicant is requesting to encroach on the 10' required rear yard setback 6', thus reducing the rear yard setback to 4'.

Board of Zoning Appeals Considerations

In considering the providing of a variance we wish to provide the following information:

- a. *That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by any action or actions of the property owner or the applicant.* Meeting the 10' setback would restrict views and block an access ramp to another structure.
- b. *That the granting of the permit for the variance will not adversely affect the rights of the adjacent property owners or residents:* It is not believed that this encroachment will create any adverse effects to adjacent property owners.
- c. *That the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application:* The hardship would consist of not allowing the property owner to construct a storage shed.
- d. *That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare;* It does not appear that the variance will affect public health, safety or general welfare.
- e. *That granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.* City staff feels it is not opposed to the general spirit and intent of the zoning regulations.

Staff Recommendation

Staff recommends approving the variance as follows reduce the rear yard setback 6', from 10' to 4'.

A motion was made by Darnell Lawrie and seconded by Steve McBride to approve the variance as requested and recommended by staff to reduce the rear yard setback 6', from 10' to 4'. The motion carried 5-0.

Planning Commission

- c. **Consider a request to rezone a tract of land from R-1, large lot single family dwelling district to R-4, medium density multifamily dwelling district with a conditional use permit for nursing, convalescent and rest home services at approximately 2120 North 13th Street.**

Scott Holder, representing Montgomery County Assisted Living, LLC reviewed their proposed project with the Planning Commission. Larry and Linda Stockton indicated that they were concerned about traffic, and that they were told by the City 16 years ago that 11th Street was going to be paved. Scott Holder indicated that they would not be entering or exiting off of 11th Street, as their entrances were off of 13th. The Stockton's indicated that traffic from the school could create a concern.

Staff provided the following staff report to the board in written form prior to the meeting:

Summary Regarding Rezoning Request:

The Planning and Zoning Commission received a request from Montgomery County Assisted Living, LLC to rezone the above listed property from R-1, large lot single family dwelling district to R-4, medium density multifamily dwelling district with a conditional use permit for nursing, convalescent and rest home services at approximately 2120 North 13th Street.

The legal descriptions is:

Lots 3, 4, 5 and 6; and Lot 2, except a tract beginning 35' West of the NE Corner of Lot 2, thence West 131.2', thence North 110', thence East 131.2', thence North 110' to point of beginning, all in Block 3, Highland Park Addition, City of Independence, Montgomery County, Kansas.

Description of the Tract:

The property requested to be zoned lies in the northwest portion of the City. The parcels were previously utilized for agricultural type uses and were not previously developed.

Zoning and Uses of Property Nearby:

The adjacent property directly to the north, east and west is R-1; and to the south is R-2. Further to the northeast and northwest there are parcels zoned R-4. Further northwest there is also a parcel zoned Office and Professional.

Character of the Neighborhood:

The area generally consists of residential and education uses with a school located to the west of this parcel.

Suitability of the Subject Property for the Uses to which it has been Restricted:

The property under consideration is currently zoned R-1, large lot single family dwelling district and is suitable for residential use.

Length of Time the Property has Remained vacant as Zoned:

The property has been vacant as zoned for many years. There has not been any known historical development on this property as it has been utilized for agricultural use.

Extent to which Removal of Restrictions will Detrimentially affect Nearby Property:

It is not believed that rezoning to multi-family for an assisted living facility would be detrimental to the adjoining single family residential zones. There are areas in this neighborhood that are already zoned R-4, although they are not directly adjacent to property requesting rezoning.

Relative Gain to the Public Health, Safety and Welfare by the Destruction of the Petitioner's Property as Compared to the Hardship Imposed upon the Individual Landowners:

Denial of the proposed rezoning will impact the potential new owner's use of the property as it will not allow them to develop an assisted living facility as planned. Also, having an assisted living facility is a benefit to the public health, safety and welfare of the community, not a detriment.

Conformance with the Comprehensive Plan:

The general development plan map recommends the area be developed as residential.

The Housing Plan Goal provides:

To provide decent and affordable housing for present and future populations of Independence while preserving and improving existing residential areas

Objective H2 provides:

Encourage the development of a wide range of housing choices.

Objective H3 provides:

Provide ample amounts of multiple-family housing in suitable locations

This development will serve an aging population by providing additional assisted living choices within the community.

Objective G1 of the Comprehensive Plan provides:

Direct the location and subdivision design of new development in order to minimize initial and future public and private costs

This neighborhood already has infrastructure in place to serve this development.

Summary Regarding Conditional Use Permit:

Section 901.2 of the zoning code authorizes the Planning and Zoning Commission to recommend a conditional use permit for a permitted use if by its nature and operation has the following characteristics (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety. In reviewing this project City staff believes that this use meets those criteria.

The tendency to generate excessive traffic At present this neighborhood has residential and educational uses. A large amount of traffic is generated before and after school while school is in session. It is anticipated that additional traffic will be generated due to this development from residents and employees. The assisted living residence will have 22 suites. The applicant also has plans for two additional 12 suite homes possibly to be developed on this tract in the future.

A potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants: This development will attract a larger number of persons to the area than its current vacant state.

A detrimental effect upon the value of or potential development of other properties in the neighborhood: Based on the present single residential use changing to multi-family use it is believed that any effect upon the value of properties or potential future development will be positive and not detrimental.

An extraordinary potential for accidents or danger to the public health or safety. It is not anticipated that the public health and safety will be impacted unless the development creates a potential for additional traffic accidents.

The zoning ordinance in section 901.1 (page 87) describes the purpose of a conditional use as:

“ those types of uses which are considered by the City to be essentially desirable, necessary or convenient to the community but which by their nature or in their operation have: 1) a tendency to generate excessive traffic, 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants, 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or 4) an extraordinary potential for accidents or danger to the public health or safety Such conditional uses cannot be allowed to locate as a ‘right’ on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects.”

Staff Report

Article IX of the Zoning Ordinance addresses purpose and authority for granting conditionals uses.

901.0. Purpose and authority.

901 1 Purpose Conditional uses are those types of uses which are considered by the city to be essentially desirable, necessary, or convenient to the community but which by their nature or operation have (1) a tendency to generate excessive traffic, (2) a potential for attracting a large number of persons to the area of the use, thus creating noise or other pollutants, (3) a detrimental effect upon the value of or potential development of other properties in the neighborhood, or (4) an extraordinary potential for accidents or danger to the public health or safety

Such conditional uses cannot be allowed to locate as a "right" on any parcel of land within certain districts without consideration of existing conditions at the proposed location and of properties neighboring upon the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse factors

901.2. Authority to grant permits The governing body shall have the authority to grant conditional use permits, subject to such conditions of design and operation safeguards and time limitations as it may determine for all conditional uses specified in appendix "A" of this ordinance and for all permitted uses for which the planning and zoning commission has found that by their nature or in their operation have characteristics listed in clauses (1), (2), (3) and (4) of section 901 1 of this article, provided, however, that said conditional use permits for permitted uses shall not establish standards or conditions that are less restrictive than those set out in the district regulations for the district in which said use is located.

(Ord. No. 3863, § 1, 12-20-01)

In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1.

Additionally, the decision of the Planning Commission to recommend a conditional use shall be based on the following criteria (902.2):

- a. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation. *The conditional use permit does comply with the R-4 district regulations if the rezoning is approved. The applicant will also be required to follow all other regulations, including off street parking requirements*
- b. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public. *It is believed that this new assisted living facility will contribute to the welfare or convenience of the public.*
- c. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located. *Based on the character of the neighborhood it is not believed that this expansion will have a detrimental effect on the neighborhood. More than likely the development will have a positive impact on the neighborhood.*
- d. The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
 1. The location, nature and height of buildings, structures, walls and fences on the site, and
 2. The nature and extent of landscaping and screening on the site.*The property will be required to meet all district regulations. The expansion is being built on a parcel that is over ten acres in size, therefore it will not dominate the area.*
- e. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII). *The applicant is required to provide adequate parking and will follow the off-street parking regulations.*
- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided. *Drainage will be addressed through the site plan review and will also be addressed in the conditional use permit.*
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys. *City staff will be working with the applicant to ensure that the ingress and egress will be designed to minimize traffic hazards.*

The zoning and uses of the surrounding properties have been presented in the rezoning report.

Action by the Planning Commission

Any recommendations regarding a conditional use permit for the subject property shall be based on Section 902.2 previously outlined in this report. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

Staff Recommendation

City staff recommends rezoning the property to R-4, medium density multifamily dwelling district and granting a conditional use permit for the following permitted uses in an R-4 district: nursing, convalescent and rest home services with the following conditions:

1. The conditional use permit is not transferable to another location and will be binding on all future owners, assigns or heirs.
2. The applicant will obtain all necessary City of Independence and State of Kansas permits to lawfully operate the uses proposed.
3. All parking, entrance and exit drives must be designed to minimize traffic congestion on public streets.
4. Any additional exterior lighting on site will be designed in such a way that it will not be directed toward or create a nuisance to any adjoining properties. Such lighting will need to be approved by the Zoning Administrator.
5. To limit noise that could affect adjoining areas there shall be no outside audio or paging equipment that exceeds a volume level that can be heard at any of the adjoining properties.
6. The location of solid waste equipment shall be designed by the company and will need to be approved by City staff. All solid waste shall be kept in containers which shall be screened from adjoining properties.
7. Any off street parking areas will meet the minimum off street parking requirements; shall be maintained in appearance and shall be used solely for parking of the residents, employees and visitors. Such parking area may not be used for storage of vehicles, equipment or other items.
8. A drainage plan designed to adequately handle a 10 year or greater storm event must be submitted by an engineer licensed in the State of Kansas to ensure that any increased runoff will be dealt with in such a way so as not to negatively impact nearby or downstream properties.
9. All property lines must be established by a surveyor licensed in the State of Kansas.
10. A detailed site plan and landscaping plan shall be submitted to and approved by City staff prior to any such work commencing.
11. All improvements will be maintained and kept in serviceable condition; and the property must be kept free of debris and trash.

Staff's recommendation is based on the criteria set forth in 902.2, "a through g" of the zoning code.

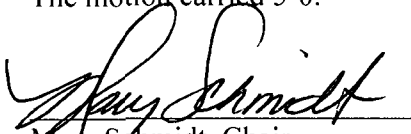
A motion was made by Steve McBride and seconded by John Faller to approve the rezoning with a conditional use permit with the conditions as listed in the staff report as recommended by staff. The motion carried 5-0.


Planning Commission

d. None.

Adjournment

The meeting was adjourned with a motion by Tony Holmes and a second by Darnell Lawrie. The motion carried 5-0.



Mary Schmidt, Chair

Darnell Lawrie, Secretary